

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KYLE D. MILTON,

Petitioner,

v.

HENDRIX,

Respondent.

No. 3:21-cv-00076-SB

OPINION AND ORDER

MOSMAN, J.,

On July 3, 2023, Magistrate Judge Stacie F. Beckerman issued her Findings and Recommendation (“F&R”) [ECF 38], recommending that I deny habeas relief, dismiss the Petition for Writ of Habeas Corpus [ECF 2] with prejudice, and decline to issue a Certification of Appealability. Petitioner filed Objections to the F&R on July 28, 2023 [ECF 42]. Respondent filed a Response on August 11, 2023 [ECF 43]. Upon review, I agree with Judge Beckerman. I DENY habeas relief and DISMISS the Petition for Writ of Habeas Corpus with prejudice. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. *See* 28 U.S.C. § 2253(c)(2).

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge,

but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Beckerman's recommendation, and I ADOPT the F&R [ECF 38] as my own opinion. The Petition for Writ of Habeas Corpus [ECF 2] is DISMISSED and a certificate of appealability is DENIED.

IT IS SO ORDERED.

DATED this 19 day of September, 2023.

Michael W. Mosman
MICHAEL W. MOSMAN
Senior United States District Judge